

Commissioner, Indiana Department of Environmental Management v.
Harry Randhawa, LA Oasis, Inc.
2009 OEA 1, (07-S-E-4042)

OFFICIAL SHORT CITATION NAME: When referring to 2009 OEA 1, cite this case as
IDEM v. La Oasis, Inc., 2009 OEA 1.

TOPICS:

underground storage tank
piping monitoring and testing
notice
Commissioner's Order
Petition for Administrative Review

PRESIDING ENVIRONMENTAL LAW JUDGE:

Mary L. Davidsen

PARTY REPRESENTATIVES:

IDEM: Steven D. Griffin, Esq.
Respondent: John P. Reed, Esq.; Abrahamson Reed & Bilse

ORDER ISSUED:

January 22, 2009

INDEX CATEGORY:

Land

FURTHER CASE ACTIVITY:

[none]

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used for all prior correspondence to La Oasis, and to the same address provided to the Court by Harry Randhawa for these proceedings.

2. The Court received a one-page letter from Harry Randhawa (“Letter”), which Letter the Court deemed as a Petition for Administrative Review. The text of the Letter indicated that the Letter was dated December 22, 2007 and was sent via certified mail. The certified mail was postmarked December 31, 2007. Therefore, La Oasis’ Petition for Administrative Review (“Petition”) was filed December 31, 2007.
3. On January 7, 2008, the Court issued a Notice of Incomplete Filing and Order to Supplement Petition (“Notice”) to La Oasis, at the address used by Respondent on the Petition for Administrative Review. The certified mail transmission was returned to the Court as “unclaimed” on February 14, 2007; the regular mail transmission was not returned. La Oasis responded to the Court’s Notice on February 4, 2007.
4. In its Petition, La Oasis claimed that it received IDEM’s CO on December 20, 2007 “by hand from Mr. Robert Stimbu”. No evidence has been presented to indicate Mr. Stimbu’s affiliation to any party, or to the United States Post Office. Mr. Randhawa’s March 9, 2008 email to his legal counsel states that he was communicated with IDEM prior to filing his Petition. *IDEM’s Motion, Ex. A*. In La Oasis’ Response to IDEM’s Motion, Respondent, by counsel, does not address the exact date as to when Respondent received the CO, but argues that any failure by Mr. Randhawa to respond in a timely fashion should be excused due to extreme financial and personal family health crises which pressured Mr. Randhawa, and to the fact that at the time, Mr. Randhawa was not represented by counsel and was proceeding *pro se*. IDEM’s Motion presents substantial evidence that the United States Post Office attempted to deliver the CO on November 30, 2007.

CONCLUSIONS OF LAW

1. The Office of Environmental Adjudication (“OEA”) has jurisdiction over the decisions of the Commissioner of the Indiana Department of Environmental Management (“IDEM”) and the parties to this controversy pursuant to I.C. § 4-21.5-7, *et seq.*
2. This is a Final Order issued pursuant to I.C. § 4-21.5-3-23, I.C. § 4-21.5-3-27, and 315 IAC 1-2-2. Findings of Fact that may be construed as Conclusions of Law and Conclusions of Law that may be construed as Findings of Fact are so deemed.
3. The OEA’s findings of fact must be based exclusively on the evidence presented to the Environmental Law Judge (“ELJ”) and deference to the agency’s initial factual determination is not allowed. I.C. § 4-21.5-3-27(d); *Indiana Dept. of Natural Resources v. United Refuse Co., Inc.*, 615 N.E. 100 (Ind. 1993); *Indiana-Kentucky Electric v. Commissioner, Indiana Department of Environmental Management*, 820 N.E.2d 771, 781 (Ind. App. 2005). “*De novo* review” means that:

all are to be determined anew, based solely upon the evidence adduced at that hearing and independent of any previous findings.

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Grisell v. Consol. City of Indianapolis, 425 N.E.2d 247 (Ind.Ct.App. 1981).

4. OEA is required to base its factual findings on substantial evidence. *Huffman v. Office of Env'tl. Adjud.*, 811 N.E.2d 806, 809 (Ind. 2004)(appeal of OEA review of NPDES permit); *see also* I.C. § 4-21.5-3-27(d). The parties disputed whether Respondent's Petition for Administrative Review was timely filed. OEA is authorized "to make a determination from the affidavits . . . pleadings or evidence." I.C. § 4-21.5-3-23(b). "Standard of proof generally has been described as a continuum with levels ranging from a "preponderance of the evidence test" to a "beyond a reasonable doubt" test. The "clear and convincing evidence" test is the intermediate standard, although many varying descriptions may be associated with the definition of this intermediate test." *Matter of Moore*, 453 N.E.2d 971, 972, n. 2. (Ind. 1983). The "substantial evidence" standard requires a lower burden of proof than the preponderance test, yet more than the scintilla of the evidence test. *Burke v. City of Anderson*, 612 N.E.2d 559, 565, n.1 (Ind. Ct. App. 1993). *GasAmerica #47*, 2004 OEA 123, 129. *See also Blue River Valley*, 2005 OEA 1, 11-12. *Objection to the Denial of Excess Liability Trust Fund Claim Marathon Point Service, ELF # 9810570/FID #1054, New Castle, Henry County, Indiana; Winimac Service, ELF #9609539/FID #14748, Winimac, Pulaski County, Indiana; HydroTech Consulting and Engineering, Inc. (04-F-J-3338)*, 2005 OEA 26, 41.
5. I.C. § 13-30-3-5 provides that Commissioner's Orders (CO) must be appealed to the Office of Environmental Adjudication within twenty (20) days of the CO's receipt.
6. Respondent La Oasis had twenty (20) days from November 30, 2007, the date of Respondent's receipt of the CO, until Thursday, December 20, 2007, to file the Petition for Review.
7. Even if Respondent's response filed with the Court could be considered a Petition for Review, it was not filed in a timely manner.
8. The Petition for Review was not filed until December 31, 2007, and was not timely filed in this matter.
9. No provision of law, including I.C. § 4-21.5, *et seq.*, or I.C. § 13-30-3-5, allows the Court discretion to extend a deadline to file a Petition for Administrative Review, even for financial or personal family health crises, despite their regrettable sincerity or severity. *Wayne Metal Prod. V. Dept of Env. Man.*, 721 N.E.2d 316, 319 (Ind. Ct. App. 1999), *trans. den.* (Ind. 2000). And, it is well established that pro se litigants are held to the same standard as are licensed lawyers. *Goossens v. Goossens*, 829 N.E.2d 36, 43 (Ind. Ct. App. 2005).
10. As this Court's conclusion that it lacks jurisdiction to hear this Petition for Administrative Review is dispositive of this case, the Court will not address further arguments as to whether this matter should be dismissed by default.

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11. As this matter is dismissed for failure to file a timely Petition for Administrative Review of IDEM's CO, the facts and law contained in the CO become the law of the case. *Id.*

FINAL ORDER

AND THE COURT, being duly advised, hereby **FINDS AND ORDERS** that Complainant, Indiana Department of Environmental Management, has provided substantial evidence required to meet its burden of showing that Respondent's Petition for Administrative Review was not timely filed, as a matter of law, and should be dismissed. Respondent, Harry Randhawa and La Oasis, Inc., did not provide substantial evidence to contravene Complainant's requisite burden of proof and persuasion. Complainant, Indiana Department of Environmental Management, is entitled to judgment that Respondent's petition for administrative review should be dismissed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Complainant, Indiana Department of Environmental Management's Motion to Dismiss is **GRANTED**. Judgment is entered in favor of Complainant, Indiana Department of Environmental Management and against Respondent Harry Randhawa and La Oasis, Inc, whose Petition for Administrative Review is therefore **DISMISSED**. The Indiana Department of Environmental Management's Commissioner's Order is the law of the case. All further proceedings before the Office of Environmental Adjudication are hereby **VACATED**.

You are further notified that pursuant to provisions of I.C. § 4-21.5-7-5, the Office of Environmental Adjudication serves as the ultimate authority in administrative review of decisions of the Commissioner of the Indiana Department of Environmental Management. This is a Final Order subject to Judicial Review consistent with applicable provisions of I.C. § 4-21.5, *et seq.* Pursuant to I.C. § 4-21.5-5-5, a Petition for Judicial Review of this Final Order is timely only if it is filed with a civil court of competent jurisdiction within thirty (30) days after the date this notice is served.

IT IS SO ORDERED in Indianapolis, Indiana this 22nd day of January, 2009.

Hon. Mary L. Davidsen
Chief Environmental Law Judge